

**BEFORE THE INDIANA
BOARD OF SPECIAL EDUCATION APPEALS**

In the Matter of K.K. and the)
South LaPorte County Special Education)
Cooperative and the New Prairie United) **Article 7 Hearing No. 1116.99**
School Corporation)

The hearing and appeal issues were determined to be:

1. Should an order to grant a high score Core 40 diploma be issued?
2. Should an order to grant a high school diploma be issued?
3. Has the Student met goals set forth in the Individualized Education Program (IEP), Individualized Transition Plan (ITP), and Individual Service Plan (ISP)?
4. Were the recommendations of the ITP portion of the IEP regarding work scheduling implemented?
5. Did the school district's failure to initiate the phone conference including the parents regarding the student's work and work study credit and modifications as recommended and agreed upon constitute a violation of Article 7?
6. Were the recommendations of the case conference held on August 5, 1999, followed pertaining to the results of the evaluation completed in September, 1999?
7. Did the School violate Article 7 and the Individuals with Disabilities Education Act by withholding the results of the September 27, 1999 evaluation as recommended by the case conference?

PROCEDURAL HISTORY OF THE DUE PROCESS HEARING

It should be noted from the outset that any references to the “Student” or the “Student’s representative” include the parent or parents of the student. It should also be noted that New Prairie United School Corporation and South LaPorte Special Education Cooperative will be referred to collectively as the “School.”

- September 2, 1999* The School filed a request for a due process hearing with the Indiana Department of Education (IDOE).
- September 3, 1999* Thomas J. Huberty, Ph.D., was appointed Independent Hearing Officer (IHO) under 511 IAC 7-15-5.
- September 10, 1999* The IDOE sent a letter to the (IHO) indicating that the parents of the Student had requested a due process hearing. The IHO included the request into the hearing and designated the School as Petitioner/Cross-Respondent and the Student as Respondent/Cross Petitioner.
- September 14, 1999* The IHO received a copy of a complaint sent to the IDOE by the Student’s parents. The complaint was incorporated into the hearing by the IHO.
- September 29, 1999* The IHO received a letter from the Director of Special Education for the School, dated September 29, 1999, indicating that an evaluation had been completed and suggested dates and times that the parties might meet to discuss the results and to consider the Student’s graduation from high school.
- October 6, 1999* The IHO received a letter from the School’s counsel, dated October 6, 1999, indicating that a response from the parents to convene a case conference was not received.
- October 8, 1999* The IHO sent a letter to the parties ordering a case conference to be convened by October 20, 1999 and coordinated by the School.
- October 9, 1999* A copy of the letter from the School’s counsel was provided to the parents, as

indicated in their response by letter dated October 9, 1999. The parents objected to the October 8, 1999 order by submitting a complaint to the IDOE, dated October 9, 1999. This matter was incorporated into the hearing following receipt of a letter from the IDOE, dated October 12, 1999.

- October 14, 1999* The School's counsel faxed a letter and log of unsuccessful attempts to schedule the ordered case conference.
- October 20, 1999* The IHO sent a letter to the parties suggesting times for a pre-hearing conference.
- October 26, 1999* The School's counsel requested an extension of time to conduct the proceedings, and the extension was granted on November 4, 1999 until December 20, 1999.
- November 5, 1999* The parents suggested three dates to arrange a pre-hearing conference.
- December 6, 1999* A pre-hearing conference was held at the administrative offices of the school corporation. During the pre-hearing conference, the parties informed the IHO that there had been a prior due process hearing in 1998 and the Board of Special Education Appeals (BSEA) had made rulings in April, 1999. A copy of the original hearing decision and the BSEA rulings were provided to the IHO, and he took official notice of the documents.
- December 30, 1999* The Student became eighteen (18) years of age, when all rights were transferred to him concurrent with his parents' rights, pursuant to 511 IAC 7-3-49 and 34 CFR 300.517.
- December 30, 1999* The parents sent a letter to the School's counsel, dated December 30, 1999, indicating that the Student did not wish to proceed with the hearing and wished to receive his diploma and that they intended to respect his wishes and not continue with the hearing.
- January 21, 2000* The IHO held a telephone conference with the parties, and it was determined that the parents were continuing with the hearing on the Student's behalf.

January 21, 2000

The IHO sent a letter to the Student at the parents' address informing him of his rights. It is unknown if he received or read the letter, as there was no response.

February 2, 1999

A pre-hearing conference was conducted to discuss the evidence and procedures. All exhibits of both parties were admitted into evidence. The parents objected to School's exhibits P19 and P20, which were a settlement offer and a letter sent to the Student from the School regarding whether he wished to receive a diploma and end his residential placement. The parents indicated that they did not receive P19 and that P20 was a certified letter which they did not accept at their residence. The parents stated that they do not receive certified mail at their residence. After discussion, the IHO permitted these two exhibits to be admitted and the parents' objection was noted.

The School's counsel made a motion to have certain material struck which she asserted in a letter to the IHO on January 14, 2000. During the pre-hearing conference, it was determined that the School's counsel did not provide a copy of the letter to the parents, despite the IHO's order of September 14, 1999 that all correspondence to the IHO must be copied to the other party. The School did not comply with this order in this specific instance, and the letter was not entered into evidence. The IHO did issue an order striking the requested text.

The School's counsel proposed that, because the Student was not in attendance, there was no documentation that he had appointed his parents to represent him, and because he was of majority age, he should be held in default and a summary judgment in favor of the school be entered. The IHO determined that without confirmation from the Student, the IHO could not dismiss the hearing. The School's motion to default the Student was denied,

with the IHO indicating that the issues needed to be resolved and that he was willing to accept the parents' position that the Student wished to have them represent him. The parents did not provide the School or the IHO with a current address for the Student who had voluntarily left the residential program in January, 2000 after he had become eighteen years of age. The Student's mailing address and phone number for the purpose of sending him the hearing decision were deemed to be that of his parents.

February 2-3, 2000 The due process hearing was conducted.

February 28, 2000 The IHO issued his written decision.

The due process hearing was conducted over two days -- February 2 and 3, 2000. The IHO's decision found that at the time of the request for a hearing, the Student was a seventeen-year-old. The Student had been determined to be eligible for special education services as a student with an emotional handicap (EH). On March 13, 1998, the Student had been placed in Crestwood, a residential program in Pennsylvania. On December 30, 1999, the Student became eighteen (18) years of age. On January 10, 2000, the Student was discharged from Crestwood on his own volition, as he had reached the age of majority and had not been judged incompetent; therefore, he was able to make the decision to leave voluntarily. In a case conference committee meeting on April 29, 1998, it was recorded that the anticipated graduation date for the Student would be June, 2000.

On August 20, 1999, the Student completed all requirements for the Core 40 diploma because he had taken courses during the summer which rendered him eligible to receive the Core 40 diploma. By completing requirements for a Core 40 diploma, the Student also completed requirements to receive a standard diploma. The Student took the Graduation Qualifying Examination (GQE) while in Pennsylvania after the parents had resisted him taking it, and the State of Indiana ordered that it be administered. The Student did not pass the GQE on two occasions by four points on the English/Language Arts section.

On August 5, 1999, a case conference was convened to discuss the Student's pending graduation, and the parents requested that an independent educational evaluation be conducted. The director of services at Crestwood participated in the conference and indicated that he would locate an independent evaluator to conduct an educational evaluation of the Student. Upon completion of the evaluation, a copy of the report was to be provided to the school and the parents. The School agreed to pay for the evaluation. On September 27, 1999, the evaluation was completed and on or about September 28, 1999, a copy was sent to the School but a copy was not sent to the parents. The parents did not receive a copy of the report until the pre-hearing conference on December 6, 1999 and did not notify the School or Crestwood that they had not received a copy. The evaluation indicated that the Student's overall ability and achievement were in the average range, and the evaluator believed that the Student was capable of earning a high school diploma.

At the August 5, 1999 conference in which the Student participated, discussion was held regarding the possibility of arranging work-study experiences for the Student while in Pennsylvania. At that time, the Student was working part-time at a local fast food restaurant. The Student discussed work-study options with his current employer and found that work-study hours would need to be completed during school hours. He could not work enough hours to qualify for work study and doing so would also have reduced his hours to work on the weekend. The Student elected not to pursue the work-study option. The Student told the Director of Education of his decision, who testified that she had a conversation with the Student's father in August or September of 1999, indicating that the work-study plan would not be implemented because the Student had elected not to pursue it.

The Student's ITP of April 27, 1998 included Activities/Services for assisting Crestwood/Woods staff with technology, continue to follow the Woods curriculum, community outings, recreational/leisure involvement, and off-campus employment. Testimony from Crestwood staff indicated that the Student had assisted with some of the computer services and that he was interested in computers. While at Crestwood, an ISP was developed for the Student which was not part of the IEP or ITP. The ISP is a

plan written by the clinical department and addresses behavior in the residential setting. The Student improved his social skills, but continued to have difficulties with accepting authority and was seen not to be motivated toward improving some of his behaviors. Personnel at Crestwood testified that the Student had met the goals and objectives of his IEP and ITP and should be granted a diploma.

The IHO made the following Conclusions of Law. These read as follows:

Conclusions of Law

1. This matter was properly assigned this Independent Hearing Officer pursuant to IC 4-21.5 *et seq.*, and 511 IAC 7-15-5, which gives the IHO the authority to hear and rule upon all matters presented.
2. All Conclusions of Law which can be deemed Findings of Fact are hereby deemed Findings of Fact. All Findings of Fact which can be deemed Conclusions of Law are hereby deemed Conclusions of Law.
3. The issues presented in this hearing are presented below and ruled upon accordingly:

1. Should an order to grant a Core 40 diploma be issued?

Upon anticipating the student would complete requirements for a Core 40 diploma on August 20, 1999, the School properly initiated contact with the parents to gain consent for graduation, which constitutes a change of placement under 511 IAC 7-3-10. When consent to change of placement was not received, the School properly initiated a due process hearing under 511 IAC 7-15-5(a)(4). The Student completed all requirements for a Core 40 diploma according to I.C. 20-10.1-16 *et seq.* on 8/20/99. Therefore, the Student has earned a Core 40 diploma as specified by the State of Indiana and it is appropriate that it be issued to the Student effective for the 1998-99 school year.

2. Should an order to grant a high school diploma be issued?

Because the Student has met the requirements for a Core 40 diploma which recognizes a higher level of achievement and is more advantageous for the recipient, it is not appropriate to issue a standard

high school diploma in lieu of a Core 40 diploma.

3. Has the Student met goals set forth in the IEP, ITP, and ISP?

Evidence and testimony indicated that the Student has met the goals established in his IEP and ITP as per 511 IAC 7-12-1 and 511 IAC 7-13-4, respectively, and no goals were indicated as not having been met. The ISP is not a requirement of Article 7, but was established by the residential facility. Testimony from Crestwood staff indicated that the Student had made progress and that no further benefit was likely to occur with extended services. Therefore, the Student is determined to have met goals in the IEP, ITP, and ISP.

4. Were the recommendations of the ITP portion of the IEP regarding work scheduling implemented?

The ITP indicated that the Student was to have off-campus employment experiences with the assistance of a job coach. He was employed at a fast-food restaurant and was reported by the Director of Education at Crestwood to be a good worker. A job coach was assigned who monitored the Student's work experiences. Therefore, the IHO finds that these recommendations were implemented and there was no violation of Article 7 as per 511 IAC 7-13-4.

5. Did the school district's failure to initiate the phone conference including the parents regarding the student's work study credit and modifications as recommended and agreed upon constitute a violation of Article 7?

In the case conference committee meeting of 8/5/99, it was agreed by the attendees including the Student that he would pursue information about obtaining work-study credits. The case conference committee agreed that this was an appropriate activity for the Student. There were no work-study modifications agreed to during the conference, only that the Student would pursue the matter and report to his job coach. When a phone conference was to be scheduled, it was to be initiated by Crestwood to the School, who would coordinate the conference. The Student determined that work-study was not an option for him, and no action was taken. Therefore, there were no modifications to discuss, and the Crestwood did not pursue the matter. Therefore, the School is not held responsible for failure to initiate a

phone conference and did not violate Article 7.

6. Were the recommendations of the case conference held on August 5, 1999, followed pertaining to the results of the evaluation completed in September, 1999?

The case conference committee agreed to the parents' request for an educational evaluation of the Student at the School's expense. The Crestwood representative indicated that he would provide a copy of the evaluation to the parties upon its completion. Further, Crestwood was under order from the Board of Special Education Appeals (BSEA) in its ruling of April 14, 1999 to provide the parties with copies of all documents. Therefore, the matter of who paid for the evaluation and who should receive it was superseded by the BSEA orders. Crestwood erred and directly violated the orders of the BSEA by failing to provide a copy of the report to the parents at the same time it provided a copy to the School. The case conference committee agreed that it would meet to discuss the results of the evaluation. Upon receipt of the evaluation, the School attempted to schedule a case conference on several occasions to discuss the results, but the parents did not comply. The IHO concludes that the School did not violate the Individuals with Disabilities Act or Article 7 on this issue and was reasonable in its assumption that the parents had been provided a copy of the evaluation report.

7. Did the School violate Article 7 and the Individuals with Disabilities Education Act by withholding the results of the September 27, 1999 evaluation as recommended by the case conference?

Having found that Crestwood erred and violated the orders of the BSEA with regard to providing a copy of all documents to the parties, the IHO concludes that there is no evidence that the School deliberately withheld the results of the September 27, 1999 evaluation. The School was reasonable in its assumption that the parents had been provided a copy of the evaluation report. Therefore, the IHO concludes that the School did not violate Article 7 or the Individuals with Disabilities Education Act on this issue.

The IHO's Orders read as follows:

1. The School is to prepare a Core 40 diploma identical to those given to all students who graduated in 1999 with a Core 40 diploma. The diploma is to state clearly that the student graduated in 1999.
2. Upon production of the diploma, the School is to send a registered letter to the last known address of the Student informing him that his diploma is available and that he may obtain it according to the practices of the School (e.g., obtain it in person, mail, etc.)
3. The School is to permit the Student to participate in all graduation activities comparable to other students during the 1999-2000 school year if he so chooses. In the registered letter to the Student, the School is to inform him that he may participate in all graduation activities during the current academic year if he chooses to do so.
4. If reasonable attempts to contact the Student to advise him of his diploma and its availability are unsuccessful, the School is to initiate appropriate enforcement activities under IC 4-21.5-6.
5. These orders are to be implemented within thirty (30) days unless appealed to the Board of Special Education Appeals.

PROCEDURAL HISTORY OF THE APPEAL

The IHO's written decision was issued on February 28, 2000. On April 3, 2000, the Student requested an extension of time in order to prepare a Petition for Review. The Indiana Board of Special Education Appeals (BSEA), by order dated April 3, 2000, granted the Student until close of business on May 3, 2000, to prepare and file his Petition for Review. The Student's Petition for Review was received on April 26, 2000. On May 5, 2000, the School filed its Response to the Petition for Review. On May 8, 2000, the Student filed by facsimile transmission a letter which requested that the BSEA strike in whole the response dated May 5, 2000 by the School. According to the April 3, 2000 Order Granting an Extension of Time to the Student, the parties were advised that ". . . Any pleading or correspondence directed to the Board by any party hereto must also be shared with [the] representative of the other party. Failure to do so may result in dismissal or default." This was a reminder to the parties that pleadings and correspondence filed with the BSEA by any party must also

be shared with the representative of the other party. The parents failed to send a copy of this Motion to Strike to Marsha Volk who is the attorney of record for the School.

The BSEA notified the parties by order dated May 22, 2000, that it would conduct its review on May 31, 2000, beginning at 10:00 a.m., but without oral argument and without the presence of the parties. 511 IAC 7-15-6(k). The BSEA also notified the parties that the review would be tape recorded and a transcript prepared. A copy of the transcript is to be sent to the representatives of the parties when available.

Student's Petition for Review

The Student's Petition for Review was timely filed on April 26, 2000. The Student appealed based upon the following objections:

1. The Student alleges that the IHO improperly identified the Student's area of eligibility as EH when the Student is eligible for special education services as a student with Autism.
2. The Student claims that the BSEA's previous ruling indicated that the IEP developed was appropriate and indicated that the Student will graduate in the year 2000 and not in 1998-1999 as indicated by the IHO. The Student claims that the allegation that the Student met all the requirements seven (7) days prior to the start of the 1999-2000 school year may be convenient for the parties involved but does not support the fact that the Student is deficient in the area of skills required to graduate. The Student indicates that the determination was made seven days prior to the deadline requiring that a student pass the GQE before they can receive their diploma, and the Student has been left without the necessary skills as required.
3. The Student claims that the work study program discussed at the case conference was never implemented, and that the Director never had any conversation with the Student's father concerning the work study program.
4. The Student claims the IHO ignored evidence and testimony from the educational evaluation

conducted by Dr. Schaller regarding the Student's progress and abilities which were compiled from the testing results. The Student claims that Dr. Schaller's testimony indicated that completion of requirements was in question.

5. The Student claims that the Crestwood facility agreed to provide copies to both parties in an April 14 ruling, and the BSEA ruling was directed at the material generated from the Crestwood facility that should be shared with both parties. The Student claims that this ruling did not address the sharing of information originating from outside parties, and that it did not direct Crestwood to violate confidentiality laws in regard to material not generated in-house. The Student claims that the IHO erred in his decision that Woods was granted authority by the BSEA ruling to distribute confidential information without proper releases. The Student claims the IHO disregarded evidence and testimony regarding proper releases and authority in accordance with current law.
6. The Student claims that the School was not reasonable in its assumption that a copy of the evaluation had been provided to the Student, since the School did not supply a copy. The Student claims it had been stated and reiterated in transcripts of case conferences how the Student would receive a copy prior to the next case conference.
7. The Student claims that the IHO allowed the School's legal counsel to file a motion to strike a letter from the record which was sent to all other interested parties except the Student. The Student claims this letter included disparaging remarks about the parents, was displayed by the School's legal counsel at the hearing, included in the record, and acted upon by the IHO. The Student claims that the School's legal counsel and the IHO totally ignored the rule of sharing all information with all interested parties.
8. The Student relies on a March 22, 2000 newspaper article in the LaPorte Herald Argus and claims that Ms. Volk no longer represents the South LaPorte County Special Education Cooperative. The Student claims that Mr. Gary Schoof is the representative counsel.

School's Response to the Petition for Review

The School filed its Response to the Petition for Review on May 8, 2000. In summary, the School argues that there is no basis for overturning the IHO's decision as the IHO's findings of fact and conclusions of law were correct in all respects. The School addressed each of the parents' exceptions to the IHO's decision as follows:

1. The parents alleged that the IHO improperly identified the Student's area of eligibility. The issue of identification was not one of the issues which was heard; therefore, it cannot be raised at this level.
2. The parents argue that because a previous IEP anticipated that graduation would be in the year 2000, it is a violation of the law to allow the Student to graduate early even though he has met all of the requirements. The evidence showed that the Student met all the requirements necessary to receive not only a standard Indiana high school diploma but the honor of a Core 40 diploma. The School claims that the parents presented no evidence to support their allegation that the Student is deficient in any of the skills required to graduate; therefore, there is no basis for overturning the IHO's decision with regards to the granting of a Core 40 diploma to the Student.
3. The School claims that the parents raised the "red herring" of a discussion of a work study program change when the evidence was quite clear and stands unrefuted. During the case conference on August 5, 1999, the possibility of obtaining additional work study credits was discussed. No change in the IEP was made regarding this suggestion. Testimony showed that the Student had explored this opportunity for additional work study credit and found that it was not appropriate for his needs. The School claims that this is a non-issue and has nothing to do with the issue of whether the Student should be granted a diploma. The School also claims that the parents have offered no evidentiary support for the overturning of the IHO's findings of fact and conclusion of law in this area and therefore the IHO's decision should be reaffirmed by the Board.
4. The School claims that there is no testimony whatsoever to support the parents' allegation that the IHO ignored evidence and testimony regarding the evaluation conducted by Dr. Schaller.

The parents allege that Dr. Schaller's testimony indicated that completion of requirements was in question. Dr. Schaller testified that the Student's academic performance was consistent with a 12th grade level, and that there was no conflict between his evaluation and the Student's failure to pass a small portion of the GQE by four points. The School claims that the parents offered no evidence at the hearing to refute Dr. Schaller's conclusions, and there is no support for overturning the IHO's decision with regard to Dr. Schaller's evaluation.

5. The School claims that the parents have misrepresented the BSEA's previous ruling regarding the sharing of materials when the parents take issue with their not being provided a copy of Dr. Schaller's evaluation at the time it was forwarded to the residential facility and the School. The School claims that the IHO's decision in 1998 stated that "the residential facility is ordered to share all information equally with the parents and the school." The BSEA's decision on April 16, 1999, supported the IHO's decision in all respects. The School claims that there is nothing in the IHO's decision or the BSEA's decision which support the parents' present position that the ruling "did not address or legally constitute the sharing of information originating from outside parties." Furthermore, Dr. Duncan testified that: the case conference had agreed that it would reconvene after the completion of Dr. Schaller's evaluation; the School was never directed to give the parents Dr. Schaller's evaluation; and the parents knew that the evaluation had been completed but refused to request it from anyone until the pre-hearing conference in December 1999. The School claims that there is no requirement in either IDEA or Article 7 to provide an evaluation in advance of the case conference, and there is no support for the parents' position that it would have violated rules of confidentiality for the residential facility to provide the evaluation. There is no evidence to support the parents' allegations or to support overturning the IHO's decision in this regard.
6. The School claims there is no evidence in the record to support the parents' allegations that the School was not reasonable in its assumption that it thought the parents had a copy of the evaluation. The School also claims there is no evidence to support overturning the IHO's decision in this regard.

7. The School claims that the issue of striking portions of a letter has nothing to do with the due process issues that were heard in this matter. The IHO's decision in this regard does not appear in the findings of fact, conclusions of law or in his order. The School claims the parents' rights were protected by the fact that the specific items in question were not entered into evidence, and the IHO was correct in issuing an order striking the text.
8. The School states that Marsha Volk continues to serve as counsel for the School and the Cooperative, and that the parents attempt to discredit the School's counsel before the BSEA has no relevance to the issues being considered by the BSEA.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

The BSEA convened on Wednesday, May 31, 2000, to review the Petition for Review and the Response thereto in consideration of the record as a whole. All members were present and had reviewed the record. The review was tape recorded. A transcript will be made from the tape and provided to the parties by the IDOE.

In consideration of the record, the Petition for Review, and the Response thereto, the BSEA now finds as follows:

Combined Findings of Fact and Conclusions of Law

1. The BSEA has jurisdiction in the matter pursuant to 511 IAC 7-15-6.
2. Ms. Volk is the attorney for the Coop and is the attorney of record, so that the facts sent by the parents in their May 8, 2000 fax are disallowed.
3. The BSEA denies objection #1 of the parents' Petition for Review.
4. The BSEA denies objection #2 of the parents' Petition for Review.
5. The BSEA denies objection #3 of the parents' Petition for Review.
6. The BSEA denies objection #4 of the parents' Petition for Review.

7. The BSEA denies objection #5 of the parents' Petition for Review.
8. The BSEA denies objection #6 of the parents' Petition for Review.
9. The BSEA denies objection #7 of the parents' Petition for Review.

Orders of the Indiana Board of Special Education Appeals

In consideration of the above Combined Findings of Fact and Conclusions of Law, the Indiana Board of Special Education Appeals now holds:

1. The decision of the IHO is upheld.
2. Any other matters not specifically addressed by the BSEA in this written decision are hereby deemed denied or dismissed.

Date: May 31, 2000

/s/Cynthia Dewes
Cynthia Dewes, Chair
Board of Special Education Appeals

Appeal Right

Any party aggrieved by the written decision of the Indiana Board of Special Education Appeals has thirty (30) calendar days from receipt of this decision to request judicial appeal from a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-15-6(p).